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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report of the Special Rapporteur on toxic wastes,
Ms. Fatma-Zohra Ksentini

Addendum

Report on the mission of the Special Rapporteur to Africa

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Introduction

1. In resolution 1997/9, the Commission on Human Rights noted with grave concern that adequate staff and financial resources had not been made available to the Special Rapporteur to enable her to discharge her mandate effectively, including undertaking in situ missions; requested the Special Rapporteur, in preparing her next report, to continue to consult all relevant bodies, in particular the secretariat for the Basel Convention (SBC), and urged all Governments, United Nations bodies, specialized agencies, the United Nations Environment Programme, the SBC and non-governmental organizations to continue to cooperate fully with the Special Rapporteur by providing information on the movement and dumping of toxic and dangerous products and wastes; also requested the Special Rapporteur to continue to undertake, within her mandate, a global, multidisciplinary and comprehensive study of existing problems of and solutions to illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries, with a view to making recommendations and proposals, in her next report, on adequate measures to control, reduce and eradicate those phenomena.

2. After the fifty-third session of the Commission on Human Rights and following consultations with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur, for the first time since the establishment of the mandate, was provided with adequate staff and financial resources to undertake a mission in the field. In view of the interest demonstrated by African Governments and the fact that, for a long time, African countries have been the main target of the traffic in and dumping of toxic and dangerous products and wastes, the Special Rapporteur deemed it necessary to undertake her first visit in situ in this region.

3. At the invitation of the Government of South Africa, the Special Rapporteur visited Pretoria, Johannesburg and Cape Town from 10 to 16 August 1997 to study the issue of toxic waste in the country and to exchange views on the policies and legislation that have been adopted in response to this phenomenon and which might be useful to other African countries affected by the same problem.

4. Following her visit to South Africa, the Special Rapporteur visited Kenya from 16 to 19 August 1997, mainly to hold consultations with the secretariat of the United Nations Environmental Programme (UNEP) in Nairobi. During her visit, the Special Rapporteur held consultations with the Deputy Executive Director and the Legal Officer of UNEP. She also met with officials of the United Nations Development Programme (UNDP) and local non-governmental organizations (NGOs).

5. Consultations unfortunately could not be held with the Kenyan authorities. In their reply to the Special Rapporteur's letter requesting the visit, the authorities, who, while reiterating their interest in the mandate, suggested another date for a field mission to Kenya. However, for financial reasons, and owing to the fact that the reply was received by the Special Rapporteur in the course of her visit to UNEP headquarters, another field mission to Kenya could not be organized.

6. Finally, the Special Rapporteur visited Addis Ababa, Ethiopia, from 19 to 21 August 1997. She held consultations with the secretariat of the Organization of African Unity (OAU) on the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of All Forms of Wastes within Africa and met with Ethiopian authorities as well as with UNDP representatives.

7. The Special Rapporteur would like to express her gratitude to the Governments of South Africa and Ethiopia for the cooperation and assistance extended to her during the mission, which enabled the Special Rapporteur to meet with all relevant segments of society. The Special Rapporteur would also like to thank the UNDP staff in the three countries for the logistical and organizational support in connection with the mission.

I. MEETINGS WITH GOVERNMENTAL AUTHORITIES

A. South Africa

8. During her visit to South Africa, the Special Rapporteur met with high-level government representatives of the following departments: Human Rights; Foreign Affairs; Pollution Control Directorate; Environmental Affairs and Tourism; Environment, Marine, Scientific and Technical Affairs; Environmental Health; Mineral and Energy Affairs; Justice. She also met with some parliamentarians, members of the South African Security Services, members of the Thor Chemicals Commission of Inquiry, and representatives of non-governmental and community-based organizations and other relevant sectors of society, which enabled her to obtain a comprehensive picture of the problem.

9. The representatives of the Department of Foreign Affairs reiterated the Government's interest in the issue of toxic wastes and their support for the work of the Special Rapporteur. They also said that South Africa, which was a party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, intended to ratify the amendment regarding the ban on exports.

10. During the meetings, the South African authorities indicated that in 1989, the building of an incinerator had raised awareness of the need for hazardous waste management. Extensive research and studies were undertaken, resulting in a ban on the importation of hazardous waste and in the publication, in 1992, of five-volume study Hazardous Waste in South Africa. The study identified a number of problems associated with waste management: few industries had waste management strategies or planned for waste management before start-up; awareness of hazards was low but there was an awareness that facilities and practices were inadequate; there were significant levels of recycling of paper, glass, plastics and metal; few companies practised waste avoidance; no annual statistics or databases were available; waste disposal facilities and transporters often lacked detailed information on the make-up of the wastes they handled; there was inadequate control over the transport of waste, a lack of sites for disposal of hazardous waste and a lack of adequate controls over existing sites. The report also found that standards for

dealing with hazardous waste ranged from responsible and professional to highly unsatisfactory. It concluded that, without legislation and control, most waste generators would not spend enough on waste management.

11. In 1995, a sulphur fire occurred at the Somerset West site of AECI Ltd. The surrounding community had to be evacuated and it was reported that in the process two people died. For the first time in such a circumstance, a commission of inquiry - the Desai Commission - was appointed to investigate. The whole community was involved in the process through public hearings and the appointment of legal counsels for those who could not afford one. The investigation lasted for four months and resulted in a report which was made available in 1997. The company was found to have been negligent.

12. The experience resulted in the drafting of a framework policy on waste management which was presented in a White Paper on Environmental Management Policy, published in the Official Gazette of 28 July 1997. The White Paper revealed that there were relatively high levels of waste which were not being disposed of in a satisfactory manner, resulting in damage to the environment and cost to society. Furthermore, there was inadequate control over transport of and trade in waste. The Government of South Africa was therefore in the process of developing new environmental legislation through a comprehensive participatory process of extensive consultations known as the Consultative National Environmental Policy Process (CONNEPP), which would give all stakeholders the chance to contribute. Through this process, the Government had undertaken to ensure the rights enshrined in the Constitution related to the environment. The policy would also define the essential nature of sustainable development.

13. Moreover, a discussion document, "Towards a White Paper on integrated pollution control and waste management", was published in May 1997 by the Department of Environmental Affairs and Tourism in collaboration with the Department of Water Affairs and Forestry. Some parties, feeling excluded, expressed criticism. The Government therefore convened a workshop in order to elicit comments and suggestions from NGOs. The results of the meeting, held on 12 August 1997, have not yet been provided to the Special Rapporteur.

14. South Africa became a party of the Basel Convention in 1994. Since then, there had been only one attempt, in 1995, by a Finnish Company, Kokkola Chemicals OY, to export a consignment of hazardous material, in this case containing cupric arsenite, to a South African company, JAD Metal Concentrators (Pty.) Ltd. The incident provoked such an outcry from Green movements that the import was stopped and the waste was sent back to Finland. A commission of inquiry was set up, in consultation with all the parties involved, including NGOs. The process was advertised in the newspaper to ensure transparency.

15. Initially, the Minister of Environment had asked for an informal inquiry. Opposition to this led to the appointment, by presidential decree at the end of 1995, of a Commission of Inquiry, with powers to call and cross-examine witnesses. The Commission's terms of reference are to investigate: (a) all legal, financial and administrative matters relating to the approval of the importation of a consignment of material containing cupric arsenite into South Africa and whether it complied with the requirements of

the Basel Convention; (b) all matters pertaining to the history, conclusion and the terms and conditions of the contracts between the Department of Environmental Affairs and Tourism and the consultant Daan Malan and Associates; (c) all matters pertaining to decisions taken by and within the Department since 27 April 1994 to delegate (including delegations by way of contract) any of the Department's powers, duties or functions to any other person, consultant, company or legal person; and to report to the President of the Republic, as soon as possible, the results of the inquiry.

16. Various parties were allowed to contribute to the work of the Commission, inter alia the Environmental Justice Networking Forum (EJNF), the Department of Environmental Affairs and the company involved. By the end of January 1997, a 2,000-page report reflecting all the contributions received had been prepared; by February 1997, the parties were prepared to argue their position in front of the magistrate. All the discussions will be reflected in a further report to be finalized in a few months; the final report will include recommendations and will be submitted to the President of the Republic.

17. Although there were no victims and the waste never even reached South Africa, the public outcry was remarkable. It may therefore be hoped that the Commission of Inquiry might set a precedent for similar, wider bodies, representing all interested parties such as importers and recyclers, to be established on a more permanent basis.

18. A similar commission was appointed by President Mandela on 24 March 1995 to inquire into the Thor Chemicals mercury-recycling operations at its plant in Cato Ridge, KwaZulu-Natal. Exploiting loopholes in the South African legislation, Thor reportedly imported and stockpiled more than 3,000 tons of toxic waste which it could not handle. This provoked an outcry on the part of NGOs. The commission is chaired by Prof. Dennis Davis, a human rights activist and governmental adviser; the other members are chemical engineers. The Thor Commission was granted juridical powers: it could call witnesses, who had the right to legal representation. Although the parties had to support it financially, NGOs were granted the right to represent the workers and provide legal assistance to those in need.

19. The Commission's terms of reference were to investigate the background to the acquisition of spent mercury catalyst by Thor Chemicals, and of additional mercury containing sludge on the premises; to report on the further utilization or disposal of the material stockpiled; and to make recommendations for dealing with the problem in the most practical and environmentally sound manner. The Government is not obliged to implement the Commission's recommendations but if it accepts the report, it automatically commits itself to enforcing them.

20. After the completion of a report on the first phase, which has already been published, the second phase of the Commission's work is to investigate the regulation and enforcement procedures relating to the monitoring and control of mercury processing, and to make recommendations on how best to minimize risks and protect workers and the environment. This phase will start as soon as two more experts in the field of health and safety are added to the Commission.

21. The most urgent task of the Commission was to decide how to dispose of the waste in an environmentally sound manner. Several options were explored: landfill, recycling, alternative technologies, or return the waste to the senders. There is no proper landfill site in the KwaZulu-Natal region, where Thor is situated, and the nearest landfill site - which has experienced numerous incidents - is at Holfontein, Gauteng. The Commission considered that the handling and transporting of the waste was in itself a hazardous operation, and that the cost would be enormous.

22. The Commission expressed some doubts regarding whether it was legally possible to return the waste to the senders because, firstly, only a small percentage of the waste had been imported; secondly, it was almost impossible to identify the respective sources because of the leakages that had occurred. Moving the waste was considered to be risky. Furthermore, the Commission was not provided with evidence which suggested that any Government would be prepared to take back the waste. Finally, dialogue with the company had to be preserved because of the social implications in terms of job opportunities and development.

23. The Commission concluded, therefore, that the only viable option was to treat the mercury waste in an environmentally sound manner by recycling via incineration or roasting. At the same time, the Commission asked the Government to appoint a team of independent engineers to monitor the recycling process and to ensure that a viable plan was implemented to decommission the plant upon completion of the recycling. Thor was asked to bear the costs of the operations of the plant in the disposal of the waste. All other costs incurred in the disposal of the waste, including costs in terms of expertise, will be borne by the Government.

24. The Commission observed that, had it not been for the tenacity of the non-governmental sector, this environmental problem might have taken far longer to surface publicly. Nonetheless, the non-governmental sector, however vigilant, should not be seen as a substitute for Government. The Commission therefore recommended that pollution control legislation in force for different departments be integrated.

25. The results achieved by this Commission will set a precedent for other cases. The accident at Thor has already produced consequences: a wider awareness on the part of the public caused many companies to keep their backyards in order. Thor has indicated that, although when the accident occurred there was no instrument regulating the importation of wastes, it is now observing the guidelines contained in the legal instruments that the Government has since ratified.

26. Nonetheless, a certain discontent was expressed by NGOs, who felt that their submissions had not been properly reflected in the final report. NGOs continue to work towards having the toxic waste at Thor returned to the senders. They oppose any substandard disposal methods which could threaten human health and the environment. In particular, EJNF complained that the standards for burning the toxic waste recommended by the Commission were internationally proven to cause health and environmental problems. Furthermore, the proposed standards would be illegal in those countries from where most of the waste came.

27. The Department of Environmental Affairs considered that the accident involving Thor Chemicals had occurred because of the dilution of responsibilities between the numerous departments involved. The Thor Commission identified various elements that had contributed to the accident, notably a substantial lack of manpower to fully enforce the legislation, the fragmentation of competences and laws, the existence of loopholes in the legislation and the fact that exemptions used to be granted with a lack of transparency during the previous regime.

28. The Department of Mines and Energy indicated that it was focusing on neutralizing, or at least mitigating environmental impacts from the mining sector. Permits for dumping were granted after a long process which involved the participation of different departments. Consultations were held in a semi-formal way with all the interested parties. Some projects were given up because of the opposition of affected communities. The Department felt that mining and the environment were not conflictual. The mining industry played an important role for the community and development. Risks for the environment were minimized now that the polluter-pays principle had been adopted. More stringent regulations were being approved and implemented.

29. The Department of Health indicated that two of its branches dealt with the environment: Environmental Health and Medical/Hazardous Substances, which also included chemicals. The Environmental Health branch monitored, inter alia, what entered the country, especially chemical wastes. Close cooperation had been established with the Department of Environmental Affairs and the Southern African Development Community (SADC), which included Botswana, Lesotho, Mozambique, Namibia, Zambia and Zimbabwe. Within the southern African region, SADC set out a Policy and Strategy for Environment and Sustainable Development in 1994. Major factors inspiring the development of this policy included the need to stop the acceleration of unsustainable development, the lack of action on environmental issues, and the failure to harness the energies of the people concerned for environmental management through participatory processes.

30. At the regional level, the Department of Health, in partnership with the South African Institute of Environmental Health and the World Health Organization (WHO), organized an International Conference on Health and Environment in Africa on 8-10 September 1997 in Pretoria in order to find ways to respond to the challenges of health and the environment in the context of sustainable development.

31. At the national level, the Department of Health was preparing an environmental health policy with the following priorities: the classification, at the local level, of the hazardous waste that entered the country; the identification of the people at risk as well as the risks involved; the training of officers and capacity-building of local institutions dealing with the waste. The main problem in implementing this plan lay in the lack of human resources and in the dispersion of information within various departments. There were many interested parties, in both the public and the private sector, that had to be taken into account in order to achieve an integrated approach in the field of hazardous substance management. This was the purpose of the multisectorial meetings taking place at present.

32. The Department of Health was also elaborating a regulatory mechanism which might include the prosecution of the responsible entities and was focusing on how to identify who was responsible. Among the sanctions foreseen were not renewing permits or withdrawing licences. Monitoring would be carried out at the local (district) level by environmental health officers reporting to the Department of Health and by individuals to be hired by the Government. A special budget had already been allocated for that purpose. Coordination was to be guaranteed by the Departments of Environmental Affairs and Education through the National Environmental Health Forum, a coordinating mechanism that involved NGOs and trade unions.

33. The need for training was further highlighted during the meeting on promoting ratification of the Basel Convention and establishing regional centres for training and technology transfer, which was held on 22-26 July 1996 in Brits, South Africa, for African English-speaking countries. The meeting was organized at the initiative of the Department of Environmental Affairs and Tourism of South Africa, in collaboration with the secretariat for the Basel Convention, as a follow-up to decision III/19 of the third meeting of the Conference of the Parties to the Basel Convention entitled "Establishment of regional or subregional centres for training and technology transfer regarding the management of hazardous wastes and other wastes and the minimization of their generation". The discussions resulted in the decision to establish training centres in the field of hazardous waste management in South Africa. Similar centres will be established in Senegal, for French-speaking countries, and in Egypt, for Arabic-speaking countries.

B. Ethiopia

34. During her visit to Ethiopia, the Special Rapporteur met, in addition to OAU officials, with the following authorities: the head of the International Organizations Department, Ministry of Foreign Affairs; the Secretary-General of the Council of Representatives (Parliament) and his Legal Adviser; the Deputy Commissioner of the Disaster Prevention and Preparedness Commission (DPPC); the General Manager of Environmental Protection. The Special Rapporteur also held consultations with the manager of the UNDP Resource/Population Sustainability Balance Programme and with the chief, Food Security and Sustainable Development, Economic Commission for Africa (ECA), as well as with local NGOs dealing with the environment.

35. The Ethiopian authorities of the Ministry of Foreign Affairs reiterated the Government's interest in the Commission's resolution and in the issue of toxic wastes. They expressed their full support for the mandate of the Special Rapporteur. They indicated that in Ethiopia there were around 200 NGOs with the number constantly growing. At present, the Government was working on the drafting of a code of conduct in order to improve its relationship with the civil society, i.e. NGOs.

36. Ethiopian authorities indicated that Ethiopia was still poorly informed on the movement of toxic wastes, although it attached a great interest to the issue as shown by its being part of the Lomé IV Convention. It had also ratified the Convention on Biodiversity and the Framework Convention on Climate Change, in May 1994. It was planning to sign the Basel and Bamako

Conventions in the near future. The Parliament had adopted the New Environmental Policy (NEP) in April 1997. The NEP was drafted by the Environmental Protection Authority in collaboration with the Ministry of Economic Development and Cooperation. The purposes of this new policy are, inter alia,

> "(a) to adhere to the precautionary principle of minimizing and where possible preventing discharges of substances, biological materials or their fragments from industrial plants and personal or communal appliances or any other external sources that could be harmful, and to disallow the discharge when they are likely to be hazardous; (b) to adopt the polluter-pays principle while endorsing the precautionary principle since pollution is likely to occur, and ensure that polluting enterprises and municipalities and wereda councils provide their own appropriate pollution control facilities; [...] (g) to review and develop guidelines for waste disposal, public and industrial hygiene and techniques to enable the cost-effective implementation of defined standards of control, and to issue regulations to enforce them; [...] (j) to maintain an up-to-date register of toxic, hazardous and radioactive substances, and to make the information available on request; [...] (o) to prohibit from importation to and from transit through Ethiopia hazardous materials, organisms or fragments of organisms as agreed by African States in Bamako."

37. The establishment of standards and guidelines, as well as a system for monitoring, is another goal of the NEP. The Government has therefore decided to maintain an updated register of toxic, hazardous and radioactive substances, and to make information available on request.

38. The governmental authorities indicated that no recent occurrences of dumping had been known to have occurred. Some attempts had been made in the past because it was difficult to monitor everything that entered the country. Investigations following some of these attempts had led to the identification of hazardous waste which had been imported and not disposed of in an environmentally sound manner.

39. The main problem remained the lack of information. For instance, some pesticides had had a tremendous impact on both the people and the environment, but they were still in use because of the lack of laboratories, trained personnel and specialists to identify harmful substances they might contain. It also happened that products used in Ethiopia, and in other developing countries, contained substances that were included in the list of toxic products and which were therefore banned in other countries. Countries which had access to the necessary information did not share it with developing countries. The result was that developed countries had higher standards protecting the life and health of their citizens.

40. The Disaster Prevention and Preparedness Commission - a governmental agency - was not dealing specifically with toxic waste at the moment because of other priorities. Currently, it was focusing on natural, rather than man-made disasters. Nonetheless, the issue was likely to be considered in the

future. Under the NEP the establishment of clear linkages between the control of pollution and other policy areas, including water resources, agriculture, human settlements, health, and disaster prevention and preparedness, was foreseen.

II. UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

41. During the consultations that the Special Rapporteur held with UNEP officials, it was emphasized that UNEP's commitment in the field of toxic waste related to two major areas. First was the Basel Convention, which was negotiated at UNEP in Nairobi in the mid-1980s, when complaints about movements of toxic waste became pressing. At the time, the Convention was the second effort by UNEP - the first being the Montreal Protocol on Substances that Deplete the Ozone Layer - to establish some sort of regulation in the field. Considering that it was only the beginning, the effort could still be regarded as remarkable for its time. Further developments in that direction resulted in the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, adopted at Waigani, Papua New Guinea, on 16 September 1995, which was not only compatible with the Basel Convention but even more stringent, and which recalled the regional approach of the Bamako Convention and the Final Act of the Conference of Plenipotentiaries on the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, adopted in 1996.

42. Secondly, UNEP took action in the field of potentially toxic chemicals, listing them in a register meant as a tool to enable developing countries to handle them. The idea of chemical safety was launched together with WHO and resulted in a programme on chemical safety. The principle of prior informed consent was further stressed. Because of the link with pesticides, the Food and Agriculture Organization of the United Nations (FAO) was also involved. Similar action was taken on Persistent Organic Pollutants (POPs). The two programmes - on chemicals and POPs - resulted in the setting up of and collaboration with focal points, which are others than those established by the Basel Convention and which implement strategies at a local level.

43. The Special Rapporteur sounded UNEP's intentions regarding a joint project. UNEP deemed it important that cooperation be established with the Office of the United Nations High Commissioner for Human Rights, either through the drafting and implementation of a specific project or a joint effort to unify standards. It was stressed that the importance of UNEP resided in the fact that it was located in Africa, one of the most targeted regions. So far, after consultations with both the governmental side and representatives of the civil society, UNEP had identified training and capacity-building as the most urgent needs of African countries wishing to monitor what entered their borders. UNEP had very strong regional offices which constantly worked with Governments. These offices might play an important role in assisting the Special Rapporteur, providing her with information and assistance.

III. ORGANIZATION OF AFRICAN UNITY (OAU)

44. Consultations were held with the OAU on the issue of the Bamako Convention, which has not yet entered into force: one more signature is needed. With regard to the relationship between the Bamako and Basel Conventions, the OAU considered that the two instruments were complementary. Although the provisions of the Basel Convention had been fully reflected in the Bamako Convention, the latter could still play a relevant regional role. The SBC is currently encouraging African countries to sign the Basel Convention.

45. The OAU confirmed that the main problem faced by African countries was the lack of information: African countries were still not being provided with databases from which to retrieve information. Legislation on toxic waste was also scarce and rarely coherent; it would therefore be extremely important for the Bamako Convention to enter into force, thus creating a regional, homogeneous response to the issue of toxic waste.

IV. CONSULTATIONS WITH NGOs

46. According to NGOs, the problems pertaining to hazardous waste management in Africa related partly to a fragmented and uncoordinated approach. In South Africa, for instance, waste legislation was found in some 37 statutes as well as numerous provincial ordinances and by-laws. Strengthening the provincial power might result in a substantial weakening of the capacity to enforce legislation. No law dealt comprehensively with waste management and disposal: there was still no legislation to give effect to the Basel Convention. South Africa had not yet signed the Basel Convention amendment banning the importation of hazardous waste but intended to do so soon. The polluter-pays principle was part of draft legislation, but it had not yet become law.

47. Weak coordination resulted from the fact that environmental matters and, in particular, the power to regulate hazardous waste, fell within the jurisdiction of several governmental departments. The lack of consolidated control made it difficult to ascertain who was responsible for what. Whether NGOs were considered depended on the specific department they dealt with, although the general feeling was that their suggestions were rarely taken into account.

48. Fragmentation of competences also affected the access to information. Sometimes no information was forthcoming at all, for instance on the movement of toxic wastes within and across the borders. It was difficult to define what was considered as hazardous waste and to specify the nature of the recycling processes. Information was rarely available on waste dumping in the poorest areas: people were not aware of what was being dumped, nor were they informed about it, with the result that the waste endangered both the people and the environment without protests being made.

49. NGOs had the feeling that the environment was still perceived as "the troublemaker" vis-à-vis investments and development. However, a general

improvement in the relationship with environmental NGOs was reported, although relations and consultations needed to be formalized in an institutionalized framework.

50. In the countries visited, environmental NGOs focused on issues related to desertification, the urban environment, biodiversity, women and the environment. They also had programmes on unsafe pesticides. Their main focus was to provide better information in different fields, including illegal dumping. Although awareness in this field was slowly rising, this issue did not generally seem to be a priority. This might be related to a lack of capacity: NGOs in Africa seemed to be too weak to be able to support their thesis with documented evidence. For toxic wastes in particular, they felt that a specialized background was required in order to prove what otherwise would be considered as a rumour.

51. Without capacity, equipment and methods, monitoring was virtually impossible. Waste allegedly is dumped into the rivers that cross the rural areas of Kenya and it was extremely difficult to have a clear picture of the substances dumped or of the quantities. The same was true for the substances entering the country from abroad. NGOs did not have the means to set up a database with all the necessary information, nor could they prove what they were reporting.

52. Concerns were expressed by some NGOs regarding their status and the role that they were allowed to play. For instance, in Kenya, although some mechanisms were in the process of being set up that would allow NGOs to enhance their role, it was very difficult to verify whether this had actually been done. NGOs expressed some scepticism about the implementation of environmental policies in Kenya, which allegedly had been postponed for several months. Reportedly, pressure from private companies trying to invest in the country was held to be responsible for the postponement. It was brought to the attention of the Special Rapporteur that, in July 1996, after a report by the BBC, the press started attacking NGOs and UNEP for threatening food security with their campaigns against pesticides. NGOs thought that the pesticide industry might have been behind those allegations.

53. The main concern of Ethiopian NGOs was the implementation of the concept of sustainable development. The manager of the UNDP Resource Population Sustainability Balance Programme confirmed that although the problem of toxic wastes in Ethiopia was not an issue at the moment, the liberalization of the economy could have a dramatic impact. In the absence of quality standards it was almost impossible to judge the quality of imported products. NGOs were trying to raise awareness through the organization of training programmes on different topics, such as pollution and clean industrial production, conservation and biodiversity, and norms and standards for imported food items. Interest was growing on the issue of waste management, and a workshop on the subject was organized in September 1997.

V. CONCLUSIONS AND RECOMMENDATIONS

54. In her previous reports to the Commission, the Special Rapporteur noted the main trends in the illicit movement and dumping of toxic and dangerous products and wastes, and analysed their characteristics as well as their

adverse effects on the enjoyment of human rights, particularly the rights to life and health. In particular, in reviewing the historical background to the problem, the factors contributing to the development of the phenomenon and the special difficulties encountered by African and other developing countries, the Special Rapporteur noted that African countries were specifically targeted.

55. Disparities in domestic legal standards between developed and developing countries as well as ambiguities in international instruments have provided an incentive for exporters to seek outlets in poorer, less industrialized countries which suffer from a lack of adequate legislation and human and financial resources to implement what legislation there is. Taking advantage of the economic situation in African and other developing countries and encouraged by the increasing liberalization and deregulation of international markets, which have increased the locational flexibility of transnational corporations, thus facilitating the movement of toxic wastes across frontiers, dealers export such wastes to developing countries by providing attractive financial inducements, sometimes even bribing officials.

56. African countries and other developing countries also lack the infrastructure for determining the nature of the goods they receive. They do not possess adequately equipped laboratories for testing, evaluation and environmental monitoring. Moreover, they lack analytical expertise, specialist information on the harmful characteristics of wastes and data systems.

57. During her visit to Africa, the Special Rapporteur confirmed that these factors and difficulties were encountered by African countries. All her interlocutors, whether official authorities or representatives of NGOs, expressed their deep interest in the issue.

58. The main problems, as observed during the field mission, remain the lack of reliable information on the movements of toxic wastes within countries and across borders; the lack of a database; the absence of adequate legislation to both prevent the import of toxic wastes and deal with fraudulent and other inadmissible practices used by brokers; the means to implement such legislation; the need for infrastructure, laboratories and testing facilities to determine the nature and characteristics of the wastes.

59. The Special Rapporteur noted that significant steps were being taken to face the problem in two of the countries visited. In Ethiopia, the NEP deals specifically with the issue of toxic wastes. Moreover, the Government signalled its intention to sign the Basel and Bamako Conventions. In South Africa, steps have been taken to face the major incidents that occurred in that country through the creation of independent commissions of inquiry. The composition and terms of reference of the commissions are described in this report and could serve to inspire similar action in other developing countries.

60. During her consultations, the importance of technical cooperation, training, and exchange of information at the regional and international levels was stressed. Developing countries should be provided with legal aid and technical assistance for the purpose of training their magistrates and agents

with a view to formulating national legislation to effectively combat the illicit traffic and strengthen national capacities to detect, prevent and punish fraudulent practices. Regional initiatives should be promoted. The regional approach would provide the opportunity for African countries to get together and exchange information and experience.

61. The international implications of the illicit traffic and dumping of toxic and dangerous products and wastes is also closely linked to the problem of security. It was brought to the attention of the Special Rapporteur that dumping of waste frequently occurred in countries where circumstances were such that no central Government could take action. The National Salvation Army in Somalia, for instance, declared that the country was being treated like a dumping site, with the result that neighbouring countries might be affected as well. Common action and a clear stand by the international community, in this and similar cases, are therefore urgently needed.

62. The Special Rapporteur encourages the development of specific projects that could be developed jointly by the Office of the United Nations High Commissioner for Human Rights, SBC, OAU, UNEP and interested Governments. She also encourages States that have not done so to ratify the Basel Convention and its amendment regarding the ban on exports. Moreover, she considers the entry into force of the Bamako Convention, which could play a complementary role at the regional level, to be of great importance.

63. Because of the international implications of the illegal traffic and dumping of toxic waste, the regional approach is crucial for a coordinated response to the problem. The Special Rapporteur stresses the importance of a continuous exchange of information aimed at the creation of a regional database. In this regional strategy, the roles of non-governmental organizations, local communities and associations, trade unions, workers and victims should be consolidated. Freedom of expression, freedom of association and access to effective means of redress could contribute, in conjunction with the efforts made by governmental authorities, to effectively combating the phenomenon of illicit dumping of toxic wastes and its adverse consequences.

Annex

LIST OF PERSONS/ORGANIZATIONS CONSULTED BY THE SPECIAL RAPPORTEUR DURING HER MISSION

SOUTH AFRICA

Pretoria

Mr. S.M. Monaisa (et al. from the Department of Foreign Affairs)	Director, Human Rights
Mr. M.L. te Water Naude	Chief Director, Environment, Marine, Scientific and Technical Affairs
Dr. F. Hanekom	Deputy Director-General, Department of Environmental Affairs and Tourism
Mr. W. Scott	Director, Pollution Control, Department of Environmental Affairs and Tourism
Mr. B. Fenn	Pollution Control Directorate, Department of Environmental Affairs and Tourism
Mr. T. Barnes	Senior Environmental Officer, Hazardous Materials, Department of Environmental Affairs and Tourism
Mr. J.A. Venter	Magistrate, Department of Justice
Mr. Dick Bakker	Acting Director-General, Department of Mineral and Energy Affairs
Mr. Sandy Clarke	
Mr. T.A. Phule	Director, Environmental Health, Department of Health
Mr. Van Sittert	Senior Inspector and Adviser, Bomb Disposal and Research Unit, South African Security Services

Johannesburg

Ms. Jenny Hall	Environmental Justice Networking Forum
Ms. Shelley Van der Merwe	Parliamentary Support Program Leader, Minerals and Energy Policy Centre

Cape Town

Prof. A.M. Crouch	Department of Chemistry, University of the Western Cape
Prof. F.W. Petersen	Associate Director, Chemical Engineering, Cape Technikon
Mr. T.R. Ratshitanga	Member of Parliament

KENYA

Mr. R. Sinclair	Executive Director, Environment Liaison Centre International
Mr. E. Rukangira	Coordinator, Medical Plants and Biodiversity Project, Community Action Support, Environment Liaison Centre International
Mr. John Munuve	Chief Executive Officer, National Council for NGOs
Mr. R.J. Olembo	Deputy Executive Director, United Nations Environment Programme
Mr. M. Nagai	Legal Officer, United Nations Environment Programme

ETHIOPIA

Mr. Berhanu Kebede	Head, International Organizations Department, Ministry of Foreign Affairs
Mr. B.H. Zewdineh	International Organization and Economic Cooperation Directorate General, Ministry of Foreign Affairs
Mr. Haile Halefom	Secretary-General, Council of Representatives
Mr. Birhane Gizaw	Deputy-Commissioner, Disaster Prevention and Preparedness Commission
Dr. T.B G/Egziabher	General Manager, Environmental Protection Authority
Mr. S.F. Gashut	Director, Education, Science, Culture and Social Affairs, Organization of African Unity

Mr. A.W. Ghabrial	Chief, Science and Technology Section, Organization of African Unity
Dr. G. Howard-Clinton	Head, Environment and Conservation of Natural Resources Division, Organization of African Unity
Mr. T. Aberra	Head, Economic and Social Research, House of Peoples Representatives and Council of Federation
Mr. Tilaye Nigussie	Programme Coordinator, Ethiopian Wildlife and Natural History Society
Mr. Ghirma Moges	Editor-in-Chief, Chemical Society of Ethiopia
Mr. Shibru Tedla	General Manager, Ethiopian Society for Appropriate Technology
Mr. Girma w/Giorgis	Vice President, Lem, The Environment and Development Society of Ethiopia

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